*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+WRIT PETITION No.22620 of 2007

%Dated 01-11-2007

Smt. Sumakiran Mallena,

Petitioner

VERSUS

$ The Secretary, Medical and Health,
Secretariat Building, Saifabad,
Hyderabad and others.

Respondents

! Counsel for Petitioner : Sri S. Ravindranath

^Counsel for the Respondents: ---

<GIST:

> HEAD NOTE:

? Cases referred

1. (1955) 2 SCR 983
2. AIR 1999 SC 573
3. AIR 1957 SC 529

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.22620 of 2007

Date: 01.11.2007

Between:

Smt. Sumakiran Mallena

… Petitioner

AND

The Secretary,
Medical and Health,
Secretariat Building, Saifabad,
Hyderabad and others.

… Respondents

Counsel for the petitioner : Sri S. Ravindranath

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.22620 of 2007

ORDER:-

An internal family squabble, pure and simple is sought to be given the colour of a constitutional issue in this writ petition.

The facts of this case which raise more of ethical issues rather than any legal or constitutional issues and interesting as they are, run as under:

The petitioner and respondent No.2 were married on 28.01.2007. Both are engineering graduates. While the petitioner is working as Software Analyst in a company at Secunderabad, respondent No.2 is employed as a Telecom Engineer in the United States of America. Respondent No.3, who is viewed as a thorn in the petitioner's flesh, is no other than the latter's father-in-law and respondent No.2's father. Respondent No.3 was diagnosed as suffering from **decompensated cirrhosis of liver-HCV related incurable liver infection** and was advised transplantation of liver.

Evidently, moved by his father's plight, respondent No.2 prepared himself to donate a part of his liver to his father and has reached India on 20.10.2007. Respondent No.2 allegedly planned

for getting his father operated in respondent No.4 hospital. It is this gesture of respondent No.2, which is subjected to attack in the present writ petition and in the perception of the petitioner in offering to donate a portion of his liver, respondent No.2 has been indulging in violation of her constitutional right to life, guaranteed under Article 21 of the Constitution of India.

After hearing Sri S. Ravindranath, learned counsel for the petitioner and carefully perusing the record, I am convinced that this writ petition is wholly misconceived. In order to maintain a writ petition under Article 226 of the Constitution of India, the petitioner shall satisfy the Court that the State, its instrumentalities or any other person violated any of the constitutional or statutory provisions or failed to discharge their constitutional or legal obligations resulting in violation of any of her rights.

Learned counsel for the petitioner contended that if respondent No.2 donates a part of the liver it would result in deterioration of his health, which in turn would affect the petitioner's life and liberty. In the first place, the petitioner has not produced any material in support of her assertion that donation of a part of liver would affect the health of the donor. Neither any literature from the standard medical books nor the opinions of experts in the field have been filed.

I am therefore of the opinion that this assumption of the petitioner is wholly misplaced.

Secondly, the contention of the petitioner that her husband's donation of liver violates her right under Article 21 is wholly beyond my comprehension.

Article 21, which protects a person's life and personal

liberty is one of the fundamental rights included in Part-III of the Constitution of India. While interpreting the words "except according to procedure established by law" contained in the said Article, the Supreme Court in **Vidya Verma v. Shivnarayan**[1] held that this fundamental right cannot be enforced against a private individual. It is neither the pleaded case of the petitioner nor her counsel has argued that the State or any of its functionaries are seeking to deprive the petitioner of her right guaranteed under Article 21 of the Constitution of India. While the very claim of the petitioner that donation of a portion of liver by her husband would result in violation of her fundamental right under Article 21 itself looks to me to be a far-reaching contention, in any case, Article 21 is *per se* not attracted for the reason that the act of respondent No.2, who is a private individual, is not comprehended by this Article and consequently not amenable to judicial review under Article 226 of the Constitution. Though a vague plea was raised that some of the provisions of Transplantation of Human Organs Act, 1994 may be likely to be violated in view of the haste with which surgery is planned, no specific pleadings in this regard have been raised and learned counsel for the petitioner has not advanced any contention on this aspect.

Learned counsel for the petitioner relied upon the judgment of the Supreme Court in **U.P. State Co-operative Land Development Bank Ltd., v. Chandra Bhan Dubey and others**[2] and in particular, on para 26 of the judgment and contended that High Court can issue a writ against an individual person. In my considered view, this contention is wholly meritless. The issue before the Supreme Court in that case was whether a cooperative

society was a 'State' within the meaning of Article 12 of the Constitution of India and whether the service regulations framed by it are enforceable. The observation made by the Supreme Court in that context cannot be read out of context to canvass a proposition, which in my view is far too wide that a writ petition is maintainable against an individual.

A constitution bench of Supreme Court in **Shri Sohanlal v. Union of India**[3] held:

> "Normally a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order, which appertains to his office and is in the nature of a public duty (Halsbury's Laws of England, Vol-II Lord Simonds Edition, P.84)."

Thus, law is well settled that it is only in cases where an individual, who has a legal duty to perform, failed to perform such a duty or in performance of such a duty, he violates any law, his action is amenable to the writ jurisdiction. Therefore, the writ petition is liable to be rejected as not maintainable.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.29399 of 2007 filed by the petitioner for interim relief is also dismissed.

Before parting with this case, I find it hard to refrain from expressing some of my feelings, which, of course, are not determinative of the ultimate outcome of the case. This writ petition is filed, based on two assumptions, by the petitioner, namely, (i) that her husband's affection towards his parents should

be subservient to the marital relationship between him and the petitioner, and (ii) that he cannot donate his organs without her consent.

I have asked the learned counsel for the petitioner the basis for these assumptions, but he failed to give any satisfactory reply. It is indeed painful to notice that the petitioner has ignored certain fundamental realities of life i.e., the reality that her husband owes his existence on this earth to his parents; the reality that it is the selfless sacrifices of the parents that make a child grow and prosper in every respect; the reality that the parents' affection to their children is boundless and they are prepared to make any sacrifice for the well-being of their children and the reality that no law can ever define limit or control the mutual bondage and affection between the parents and the child. The petitioner does not seem to be conscious of the fact that she is a prospective parent and likely to be placed in a similar situation as his father-in-law, respondent No.3, is presently placed. I only wish that the attitude displayed by the petitioner is only an individual aberration and not symptomatic of a disease, the society as a whole may be infected with.

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C.V.NAGARJUNA REDDY, J

Date: 01.11.2007
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[1] (1955) 2 SCR 983
[2] AIR 1999 SC 753
[3] AIR 1957 SC 529